

MONTANA PUBLIC DEFENDER COMMISSION



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Ladies and Gentlemen,

First, in response to my last letter, many of you e-mailed me with your comments on how this system is doing and what we should do to change it. In addition, many of you attended a meeting with members of the PDC on October 15, 2009. Thank you for doing so. We are all in this together. The PDC cannot function effectively without your input.

Second, in general, my sense is that many of you have felt disenfranchised. A lot of decisions have been made and continue to be made without our front-line workers knowing about deliberation process or playing a role in that process. I agree.

Third, I have the following responses to what we've heard over the past few months:

1. The PDC could not be a friendlier commission to both our clients and to you as employees and contractors. We have no prosecutors, no judges, no legislators. Everyone on the commission has and continues to serve the needs of citizens requiring legal representation but unable to afford it. We are all in this together.

2. The PDC had a lot to do initially and very little time in which to do it. That may not excuse our failure to solicit your input or to keep you informed, but I hope you will understand that the task of setting up the system in which we all play a part was a daunting one. It was even more of a challenge for an all-volunteer commission.

3. The PDC is ultimately the head of this system. The buck stops here. There are, of course, already mechanisms in place to allow the hearing of grievances and concerns. We nevertheless need a more effective mechanism whereby your input is effectively channeled through limited sources.

4. Controversy and debate are essential ingredients to the survival of system. I have not hope, nor do I wish, that a healthy dialogue between the various factions of our system will someday subside.

5. In order to keep all of our fellow-participants in this system better informed about what the PDC is doing or is considering doing, I will draft a letter after each PDC meeting memorializing what information or actions we've requested of the OPD and summarizing for the OPD salient steps the PDC has taken. I will arrange to have that letter posted to OPD website. I have drafted the first letter. It should go out today. It should be on the website about the time you receive this letter. I will also ask that particularly important correspondence be posted to the website. Please take the time to review those documents.

6. I have asked the OPD to draft a written response to each of my letters. I will ask that OPD's response posted to the website as well.

7. I now believe the FTE lawyers and investigators and contract lawyers would like to have liaison (the statute forbids more) at PDC meetings and input into PDC deliberations. The FTE union lawyers would like to set that up by having a member their executive board attend PDC meetings and provide input as a regular part of each PDC agenda. Timm Twardowski, the AFSME representative, contacted me recently he advised that investigators and staff would be content with a single liaison to the PDC. The PDC has discussed this preliminarily in the past. I will raise it as an issue at the December 2009 PDC meeting. I will ask the commission to adopt a resolution approving this mechanism in principle.

8. I also believe the contract lawyers would also like similar representation and participation in PDC meetings and deliberations. I will seek a similar approval of a similar resolution relating to contract lawyers.

9. I have asked that when the Commission members attend an educational program regarding our roles as public officials and commissioners, we

be provided with some management training on how to best facilitate input from our front-line workers in order to effectively manage the system.

10. A significant number of our employees are concerned about inequity in resource allocation to their region. Some of that concern arises from a perception in the Billings region that other regions are receiving more fiscal, human, and support resources. Some of those perceptions appear to be based on a lack of understanding of how the Case Weighting System (CWS) works. If there is a lack of understanding, the PDC shares fully in any blame. In the future, we will do our level best to inform our employees and contractors about how the system works. In the meantime, I have asked that the CWS figures for each region be reviewed both by central OPD and those who generate those figures on the regional level. OPD has now made sure that each region is assigning equal weight to cases as they come in. I have also asked OPD to provide the PDC with information regarding the number of cases assigned to contract counsel as opposed to FTE's in the Billings region and, for comparison purposes, in the Missoula region. Please see my letter to OPD which contains a discussion of this issue.

11. There seems to be a substantial dissatisfaction among our front-line lawyers with our mental health protocol. I've raised that concern with OPD. I'm optimistic that initiating a dialogue will resolve this issue.

12. I've asked that this letter be e-mailed to all FTE lawyers, investigators and staff, and to all contract lawyers. I have asked that it be posted to the website.

Fourth, the PDC needs your help. We are a volunteer organization. We are considering seeking funding for an administrative staff, but any funding would ultimately be deducted from other portions of the Public Defender System. I am certainly open to broader participation in this system by front-line attorneys, investigators and staff, but with the participation comes responsibility and effort. For now, I'm asking you to do the following:

1. Decide whom you want to represent you at the PDC meetings before the Commission's first meeting in 2010.

2. Decide what you would like the Commission to spend in order to facilitate attendance of liaisons. Communicate your preference to a member of your executive board. I'm fairly certain we can pay lodging, travel and per diem. Beyond that, it's difficult to ask an entirely volunteer commission to reimburse ex officio members for lost wages or fees. If you feel, that's important, however, have your representatives communicate that to the PDC.

3. Input everything being asked of you into the Just Ware system. That data is the key to our funding. If we can't produce sufficient information to justify funding increases, we have no chance of increased funding. There is a scene in the *African Queen* in which Bogey is forced to get into swampy leach-infested water to tow the board down river. When he gets out he is covered with leaches. After Kate Hepburn picks them off him, he realizes their only chance of moving the boat is to get back into those same waters. I have a sense that many of you relish inputting data into Just Ware about as much as Bogey wanted to get back into the water. I fully understand your position. Being the principal in a private practice, I can even empathize as I input my hours and fiscal data. That data, however, is the key to my staying in business. Input into Just Ware is equally important.

4. Read the PDC documents posted to the website and any responses. If you have concerns about what you read, communicate them immediately to your representative so they can be channeled to the PDC.

5. Read the American University study and the PDC's response. If you've got ideas or comments please forward them to your representative as soon as possible so they can be channeled to the PDC.

6. Encourage your members of the Labor Management Committee to further refine the Case Weighting System. As I understand it, Just Ware now provides us with a full range of data to assist the Labor Management Committee in projecting what a given case will take in time and, perhaps more important, how much additional time will be required if the case requires extensive discovery, pre-trial hearings and/or trial. As I mentioned above, the CWS is the only way the PDC has to insure resources are being expended in an equitable manner. Asking us to compare the number of cases, the number of people in jail, or the number of

trials in a given region with that of other regions simply doesn't work. There are too many unknowns. If the OPD and PDC are to assuage any perceptions, valid or not, that resources are being inequitably expended, we've got to have a CWS system that is as comprehensive as possible without becoming unwieldy.

Finally, whether we like it or not, this system is a bureaucracy. Neither I nor the PDC can pretend to raze that framework and have the Phoenix of a socialist system rise from the ashes. There is a need for framework. There is a need for a chain of command. There is a need for accountability. There is a need for some of us to play the role of managers and some to be managed. With that said, however, we are all united by a common goal B one of the most noble in a democratic society. I sincerely hope we can focus on that goal while recognizing and respecting the various and sometimes conflicting interests that make up the whole of our new system.

Thanks for reading this letter. I look forward to working with and for each of you in the years to come.

Michael J. Sherwood